



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by A.N.
AICAC File No.: AC-04-13**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, A.N., appeared on her own behalf via teleconference call; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: January 26, 2006

ISSUE(S): Whether the Appellant has provided a reasonable excuse for failing to apply for a review within the statutory sixty (60) day time limit

RELEVANT SECTIONS: Section 172 of The Manitoba Public Insurance Corporation Act ('Act')

MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was injured in a motor vehicle accident on August 10, 2001. As a result of her injuries she was in receipt of Personal Injury Protection Plan benefits under the Act, including Income Replacement Indemnity ('IRI') benefits.

On October 22, 2002 the Appellant's case manager wrote to her indicating that he was unable to reconsider a previous decision regarding the Appellant's claim for further IRI benefits as a result of overtime hours lost.

On June 24, 2003, the Appellant's case manager again wrote to the Appellant indicating that the Appellant's IRI benefits would not be extended beyond January 16, 2002.

The Appellant sought internal review of these decisions by way of Application for Review received by the Internal Review Office on September 21, 2004.

The Internal Review Officer requested an explanation as to why the Application for Review was received well outside the sixty (60) day time period allotted for filing. The Applicant responded by letter dated October 9, 2004.

In a decision dated October 29, 2004, the Internal Review Officer responded to the Appellant's letter dated October 9, 2004. She stated:

In a letter dated October 9, 2004, you wrote that you did not realize your injury would be chronic. You wrote that you are managing well with the help of home physiotherapy for the past year but suffered a flare-up when you pushed a portable washing machine. You also wrote that with respect to overtime there was much overtime available for the past three to four years. You enclosed a copy of your pay stubs in 2003.

In looking at both of the decision letters you wish to have reviewed, it is clearly stated that if you are not satisfied with your Case Manager's decision, you may apply for a review and the written application must be received by the Internal Review Office within 60-days from the date the letter was received.

There is nothing in your letter of October 9, 2004 to suggest that you were unable to file the Application for Review with the requisite time period.

Given that your Application for Review was so out of date, that the Appeal Provisions were clearly stated on each letter and that there is no reasonable excuse for the extreme lateness of your Application, it is my decision that you are not entitled to a review.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Submissions

Submission of the Appellant

The Appellant submitted that she was in [text deleted] when she received the case manager's decisions. She indicated that she was disgusted when she read the letters as she was expecting more IRI benefits. She did not understand why she would have to make an appeal for this Income Replacement. So, she put the letter in a corner and did not think about it for a while. She was trying to work and forget the whole thing so she could carry on with a normal life and leave her frustrations aside for a while. She described the difficulties that she had in recovering from the accident and her frustration with having to use her sick leave benefits as a result of the motor vehicle accident.

Submission for MPIC

Counsel for MPIC noted that in addition to the two (2) case manager decision letters referred to by the Internal Review Officer, there had been an earlier decision on IRI benefits dated April 15, 2002. Looking at the dates of these three (3) letters, April 15, 2002, October 22, 2002 and June 4, 2003, it was well over a year later that the Appellant sought internal review for her IRI benefits.

The Appellant appears to have put forward three (3) excuses for this delay. The first was that she was suffering from symptoms due to the car accident. However, counsel for MPIC submitted that the Commission should not accept this as a reasonable excuse for failing to apply for internal review. If motor vehicle accident related aches and pains were a reasonable excuse

for not filing for reviews and appeals within the time period, then these time limits would become meaningless, as all claimants could rely upon such an excuse.

The Appellant's second excuse was based upon her evidence that she didn't understand why she had to file an appeal. She did not indicate that she did not understand the appeal process, but rather expressed the view that she should not have to appeal. Disgruntlement and frustration with the adjudicative process, counsel for MPIC submitted, should not be accepted as a reasonable excuse for not complying with that process.

Counsel for MPIC also noted that the Appellant had argued that she required a great deal of time in order to gather the evidence to support her claim. However, a review of the documents on file indicated that the relevant information regarding her work record was available by November 2002, only a few weeks after the October 22, 2002 case manager's decision and six to eight (6-8) months before the June 26, 2003 decision. Accordingly, this argument cannot form any foundation of a reasonable excuse for failing to apply for internal review within the time periods.

Counsel for MPIC also noted that if the Appellant had sufficient understanding of what was necessary to support her claim to ask for the appropriate material from her employer, she cannot be taken to have not filed for review because she didn't understand the review and appeal process.

Discussions

Application for review of claim by corporation

172(1) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

172(2) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

Response within 30 days

172(3) The corporation shall respond to the claimant within 30 days after receiving an application for review.

Section 172 of the Act provides that a claimant may seek an internal review of a decision. The decisions of the case manager which were considered by the Internal Review Officer set out the right to request such a review if dissatisfied with the decision, pursuant to Section 172(1) of the Act, at the bottom of the decision. The time limit of sixty (60) days is clearly set out as well.

If you are not satisfied with this decision you may request a review under Section 172(1) of the Manitoba Public Insurance Corporation Act. Application forms for review can be obtained from any Manitoba Public Insurance office or you can contact me directly. The Review Office must receive your written application within sixty (60) days from the date you receive this letter.

The onus is on the Appellant to show that, on a balance of probabilities, she had a reasonable excuse for failing to apply for a review within the statutory sixty (60) day time limit.

The Commission is of the view that the Appellant has failed to provide such a reasonable excuse. The evidence of the Appellant was that it took some time to accumulate the information from her employer which she required to support her claim, that she was still suffering from motor vehicle related aches and pains during this period, and that she experienced frustration with the process, not understanding why she had to file an appeal in order to receive the benefits to which she felt she was entitled.

However, the Commission finds that the Appellant received the necessary information from her employer well before the statutory deadline for filing an internal review application, and that her injuries did not prevent her from filing the Application for Review. Rather, the Commission finds that it was the Appellant's disgruntlement and frustration with the need to "appeal" or seek a review from the case manager's decision which delayed her Application for Review. The Commission accepts the argument of counsel for MPIC that this is not a reasonable excuse for failing to apply for a review.

Therefore, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated October 29, 2004 is confirmed.

Dated at Winnipeg this 16th day of February, 2006.

LAURA DIAMOND